

ADVERTISING AGREEMENT

for

THISTLEDOWN

This Agreement is entered into this _____ day of
_____, 1988, by and between Philip Morris U.S.A.
("Philip Morris"), a division of Philip Morris
Incorporated, a Virginia corporation with principal
executive offices at 120 Park Avenue, New York, New York
10017, Miller Brewing Company ("Miller"), a Wisconsin
corporation with principal executive offices at 3939
West Highland Boulevard, Milwaukee, Wisconsin 53201
(Philip Morris and Miller being sometimes collectively
referred to herein as "Advertiser"), and Diamond Vision,
Inc., a Delaware corporation with principal executive
offices at 430 Park Avenue, New York, New York 10022
("DVI"), for advertising at Thistledown, a racetrack
located in North Randall, Ohio (the "Racetrack"), and
jointly and severally operated by Thistledown Racing
Club, Inc., Summit Racing Club, Inc., Randall Racing
Club, Inc., Cranwood Racing Club, Inc., and Raceway
Properties, Inc., all of which are Ohio corporations
with principal executive offices located at 21501 Emery
Road, North Randall, Ohio.

2040833941

WHEREAS, DVI has the exclusive right to sell advertising space inside and outside the Racetrack for all periods described herein; and

WHEREAS, Philip Morris and Miller each desire to place certain advertising materials on such space, on the terms and conditions set forth in this Agreement, and DVI possesses such rights and desires to grant them to Philip Morris and Miller;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained, the parties hereto hereby agree as follows:

Section 1. Grant of Advertising Rights

DVI hereby grants to Philip Morris and Miller the right to display their advertising materials during the term hereof on (i) each of two (2) 18' x 32' advertising panels located on either side of the Diamond Vision screen at the Racetrack as represented in Exhibit A annexed hereto; and (ii) each 2' x 4' advertising panel located on the four (4) Time of Day clocks at the Racetrack, the location of which clocks shall be mutually agreed upon by the parties (all such advertising panels described in this sentence being collectively referred to herein as the "Advertiser's Panels"). Advertising on the Advertiser's Panels shall be divided between Philip Morris and Miller in a manner to be agreed upon by them. Advertising at the Racetrack

2040888943

under this Agreement may be for any products of Philip Morris Companies, Inc. or Miller, or any affiliated or subsidiary company thereof, provided that, such advertising shall not conflict with similar exclusive rights granted other advertisers.

Section 2. Obligations of DVI and Grant of Additional Rights

2.1. DVI represents and warrants that the advertising space in and around the Racetrack (the "Advertising System") consists and shall consist only of Advertiser's Panels and the additional space, if any, described in Exhibit B annexed hereto.

2.2. Advertiser's agreement to make payments hereunder is based, in part, on the aggregate advertising space existing in the Advertising System as of the date hereof, and during the term of this Agreement there shall not be installed in or around the Racetrack any space for or method of advertising (including dioramas) in addition to that currently existing in the Advertising System without the written consent of both Philip Morris and Miller. If additional advertising space is installed in the concourse area, the exterior of or on the grounds adjacent to the Racetrack, each of Philip Morris and Miller shall have first refusal rights to purchase such advertising space at the then prevailing rate; if neither Philip Morris nor Miller exercises such rights, such

2040203454

advertising space may be offered to other advertisers on the same terms. Notwithstanding the foregoing, it is expressly understood and agreed that in no event shall there be advertising or communication of any kind concerning tobacco products, smoking or malt beverage products, or any entity involved in the manufacture, sale, distribution, promotion or advertisement of any tobacco product or malt beverage, in or around the Racetrack, except by Advertiser. This paragraph shall not, however, operate to limit the sale or display for sale of tobacco and malt beverage products at concession stands or vending machines at the Racetrack, nor shall it prevent the Racetrack from making announcements concerning smoking or drinking required by or regarding local governmental regulations or regulations of the Racetrack.

2.3. Miller shall have the right to place a full-page advertisement on the inside back cover in all day-of-race programs distributed at the Racetrack during the term hereof and Philip Morris shall have such right with respect to the back cover. If either the inside back cover or the back cover, or both, are previously committed to another advertiser, then, upon the expiration of such commitment, the Racetrack shall offer to Philip Morris or Miller, or both of them, as the case may be, the right to advertise on the inside back cover, or back cover, or both, as the case may be, before offering such advertising

20408835
b4

rights to any other advertiser. DVI shall provide each of Philip Morris and Miller with a copy of the daily racing program used at the Racetrack at the beginning of each racing season and each time that a new cover for such program is printed.

2.4. Advertiser shall have the right to use or otherwise dispose of a total of four (4) minutes of advertising time on the Diamond Vision screen during each event held at the Racetrack during the Contract Period (as defined in Paragraph 4.1), said advertising rights to be divided between Philip Morris and Miller in a manner to be agreed upon by them.

2.5. DVI shall provide Philip Morris and Miller with color photographs showing their respective advertisements on Advertiser's Panels promptly after each installation of new advertising material thereon.

2.6. DVI shall use its best efforts to cause one of Philip Morris's cigarette vending machine roofs to be placed on each cigarette vending machine, if any, at the Racetrack. DVI shall use its best efforts to cause the top row of each such cigarette vending machine (at least 11 columns) to be stocked with Philip Morris's brands. DVI shall use its best efforts to cause Philip Morris's single-pack cigarette merchandiser, which shall feature Philip Morris's promotional display panel and be stocked to at least 50% of capacity with Philip Morris's brands of cigarettes, to be used in all areas in which cigarettes are sold over-the-counter at the Racetrack.

2040833547

2.7. DVI shall cause Advertiser's Panels to be illuminated during all events at the Racetrack, including special events, so long as such illumination does not materially conflict with the nature of such events. If Advertiser's Panels are not illuminated because of such a material conflict, all other advertisements in and around the Racetrack shall be similarly covered or not illuminated.

2.8. DVI shall not install or cause to be installed any light poles, pylons or other fixtures at the Racetrack that would obstruct the view of Advertiser's Panels.

2.9. DVI warrants that during each Contract Year (as defined in Paragraph 4.1) there will be scheduled no fewer than one hundred seventy (170) racing days at the Racetrack. For each day by which the Racetrack falls short of the above number of racing days, Advertiser shall be entitled to a refund as provided in Paragraph 5.4 hereof.

2.10. DVI shall provide each of Philip Morris and Miller with eight (8) adjacent seats in a prime location near the finish line for all events at the Racetrack and corresponding membership privileges in the Ecorche Club at the Racetrack. If Philip Morris or Miller intends to use such seats on any given day, DVI must be notified by 12:00 noon of the previous day. The

2040883344

notice required by this Paragraph 2.10 need not be in writing, but may be given verbally to such person or office as DVI shall designate in writing.

2.11. DVI hereby warrants and represents to Miller that it does not now have, nor will it obtain during the term of this Agreement, any interest, direct or indirect, financial or otherwise, in any license to sell alcoholic beverages.

2.12. The parties hereto mutually agree that the advertising rights described herein are special, unique and extraordinary in nature and have a particular value to Philip Morris and to Miller. In the event of any breach of this Agreement, each of Philip Morris and Miller, in addition to any other remedies available to them, shall be entitled to obtain equitable relief by way of temporary and permanent injunctions.

Section 3. Advertising Copy, Installation
and Maintenance

3.1. The design, layout and content of all advertising copy of Philip Morris and Miller at the Racetrack shall be similar to that used by them in similar sports facilities in the United States. Such advertising copy may be changed at any time.

3.2. Maintenance of Advertiser's Panels and their supporting structures shall be the responsibility and at the expense of DVI. Production and installation

204088347

of all advertising copy for Advertiser's Panels shall be the responsibility and at the expense of Philip Morris and Miller, as the case may be. DVI shall provide or cause to be provided reasonable access to Advertiser's Panels for Philip Morris and Miller and their respective designees to install copy on Advertiser's Panels.

3.3. Pursuant to its maintenance obligations as provided in the first sentence of Paragraph 3.2 hereof, DVI shall be responsible for, among other things, the repair of any breakdown in the lighting of Advertiser's Panels, including but not limited to the burnout of bulbs, and all such repairs shall be completed within three (3) days of any breakdown; if such repairs are not made within three (3) days, Philip Morris or Miller, or both of them, as the case may be, shall be entitled to a refund as provided in Paragraph 5.3 below.

3.4. Philip Morris and Miller shall have the right to approve the spacing and number of light fixtures and lamps in their respective Advertiser's Panels prior to the installation thereof. DVI shall advise Philip Morris and Miller when such installation is ready for inspection and, within ten (10) days of its receipt of notice therefrom, shall adjust the arrangement of such illumination if, in the sole judgment of Philip Morris or Miller, as the case may be, adjustment is required in order to provide even distribution of lighting across the face of its respective Advertiser's Panels.

2040833946

Section 4. Term, Payment and Renewal
of Agreement

4.1. The term of this Agreement shall commence on the date on which Advertiser's Panels have been fully installed to Advertiser's satisfaction (the "Installation Date") and shall continue for a period of ten (10) years following the Installation Date, unless extended as provided in Paragraph 4.3 below. DVI shall provide Advertiser with written notice of the Installation Date. The term or extended term of this Agreement is referred to herein as the "Contract Period." Any year during the Contract Period commencing on the Installation Date and ending on the anniversary of the Installation Date is referred to herein as a "Contract Year."

4.2. As full consideration for the advertising rights granted herein, each of Philip Morris and Miller shall pay to DVI the sum of \$62,500 for each Contract Year, which amount shall include all applicable taxes. For the first Contract Year, payment is due within ten (10) days after the later of (i) full execution of this Agreement or (ii) receipt by Philip Morris and Miller of (a) written notice of the Installation Date, (b) an invoice from DVI, (c) the color photographs to which reference is made in Paragraph 2.5 and (d) the certificate of insurance to which reference is made in

204088347

Section 8. For the remaining Contract Years, payment is due within thirty (30) days after the Advertiser's receipt of an invoice from DVI. Each of Miller and Philip Morris shall be separately invoiced for their respective annual payment obligations. The invoices provided for in this Paragraph 4.2 shall be sent to Philip Morris and Miller at their respective addresses set forth in Section 18 hereof on or after the anniversary of the Installation Date. It is expressly understood and agreed that the obligations of Philip Morris and Miller hereunder, including, without limitation, their respective annual payment obligations provided in this Paragraph 4.2, shall be distinct and separate and under no circumstances shall either Philip Morris or Miller be responsible for the obligations of the other under this Agreement.

4.3. Philip Morris and Miller, or either of them, shall have the right to purchase the advertising rights granted under this Agreement for two additional periods of five (5) years each from and after the expiration of the term hereof at then prevailing rates. DVI shall propose to Advertiser the cost for the first such additional period at least ninety (90) but not more than one hundred eighty (180) days prior to the end of the initial term hereof. All terms and conditions other than the advertising fee described in Paragraph 4.2

204085950

shall be the same as provided for herein, with appropriate changes in dates. Advertiser and DVI shall have sixty (60) days after Advertiser receives DVI's proposal regarding advertising rights for the first such additional period to reach an agreement on the then prevailing rate. If Advertiser shall have exercised its rights with respect to the first such additional period, the parties shall comply with the foregoing procedures prior to the end of the first additional period with respect to the second such additional period.

4.4. If either Philip Morris or Miller, or both of them, shall not exercise the option to renew the advertising rights granted hereunder, as provided in Paragraph 4.3, then DVI may grant such of the advertising rights granted hereunder as have not been renewed to any other party, but not upon terms more favorable than those offered to Philip Morris and Miller unless DVI shall give Philip Morris and Miller written notice of such terms and a thirty (30) day exercise period within which they may renew the advertising rights granted hereunder upon such terms. If either of Philip Morris or Miller, but not both of them, shall exercise the option to renew as provided in this Section 4, the term "Advertiser" as used herein shall thereafter refer only to the party which has exercised such option to renew.

204088355

4.5. During the term of this Agreement, Advertiser shall have the right (but not the obligation), at Advertiser's expense, to convert Advertiser's Panels in such a manner as will permit Advertiser to utilize any new technology that may exist for the display of advertising.

Section 5. Termination

5.1. In the event of a default by Advertiser or DVI in the performance of any of the terms or conditions of this Agreement, except a delay by DVI for one of the reasons set forth in Paragraph 5.2 or as otherwise set forth in Paragraph 5.4, which default shall not have been remedied within thirty (30) days after notice of the default has been given in writing to the defaulting party, the non-defaulting party, in addition to any other remedies which may be available to it under the circumstances, may terminate this Agreement with respect to the defaulting party, effective as of the date notice of termination is given in writing in accordance with the provisions of Section 18. It is expressly understood and agreed that if either Philip Morris or Miller, but not both of them, shall terminate this Agreement, or if DVI shall terminate this Agreement with respect to Philip Morris or Miller, but not both of them, then (i) the party with respect to which this Agreement has not been terminated, whether it be Philip

2040833952

Morris or Miller, shall continue to perform its obligations hereunder and DVI shall be obligated to do the same and (ii) the term "Advertiser" as used herein shall thereafter refer to the nonterminated or nonterminating party, as the case may be, whether it be Philip Morris or Miller.

5.2. Delay in the performance of this Agreement resulting from acts of God or any other cause beyond the control of DVI, or due to any strike, work stoppage, picketing, damage or concerted action by any employee or any labor organization, shall not constitute a ground for termination. In the event of a loss of service occasioned by any such cause, Advertiser shall receive a refund from DVI; the amount of such refund shall be calculated as provided in Paragraph 5.3 hereof.

5.3. Except as otherwise provided in Paragraph 5.4 hereof, the amount of any refund to Advertiser shall be calculated by dividing the number of racing days lost by the total number of racing days scheduled in the then current Contract Year, and multiplying this quotient by the amount of Advertiser's total payment for that Contract Year.

5.4. If, during any Contract Year, the Racetrack fails to schedule one hundred seventy (170) racing days as required under Paragraph 2.9 hereof, then DVI shall make a payment to Advertiser, the amount of

20480852
250

which shall be calculated by multiplying Advertiser's payment for the applicable Contract Year by a fraction, the numerator of which shall be the number of scheduled racing days in excess of twenty (20) by which the Racetrack fell short of the one hundred seventy (170) racing days required to be scheduled under Paragraph 2.9 and the denominator of which shall be one hundred seventy (170).

5.5. If any federal, state, municipal or local law, regulation, ordinance, or ruling becomes effective which makes the advertising of tobacco or malt beverage products unlawful, generally or as to the type of advertising contemplated by this Agreement, or regulates the smoking of tobacco products or drinking of malt beverages or requires a modification of advertising copy which in the reasonable opinion of Philip Morris or Miller, as the case may be, materially reduces the value of this Agreement, then this Agreement may be terminated by Philip Morris or Miller, as the case may be, with respect to its respective Advertiser's Panels so affected as of the date such law, regulation, ordinance, or ruling becomes effective, or Philip Morris or Miller, as the case may be, may replace such advertising copy with advertising copy for any products permitted under Section 1 hereof.

2040883954

5.6. If DVI or any third party exercises any undue restraint of the advertising by Philip Morris or Miller hereunder, then this Agreement may be terminated by Philip Morris or Miller, as the case may be, with respect to any or all of its Advertiser's Panels so affected as of the date such restraint is imposed.

5.7. If this Agreement is terminated for any reason prior to the end of a period for which the terminated or terminating party, as the case may be, has paid DVI as provided in Paragraph 4.2 hereof, then DVI shall pay a refund to such terminated or terminating party, the amount of said refund to be calculated as provided in Paragraph 5.3 hereof.

Section 6. Assignment

No party to this Agreement may assign any of its rights hereunder without the written approval of the other parties hereto, which approval shall not be unreasonably withheld; except that, Philip Morris and Miller may assign any or all of their respective rights hereunder to Philip Morris Companies, Inc. or any affiliated or subsidiary company thereof without the approval of any other party hereto. In the event an assignment occurs, such assignment shall not relieve the assigning party of its liabilities or obligations hereunder. This Agreement also shall be binding on the successors and assigns of the parties.

204688363

Section 7. Indemnification

7.1. Philip Morris or Miller, as the case may be, shall defend, indemnify and hold harmless DVI from any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees, arising out of the subject matter or content of any advertising copy displayed by them at the Racetrack.

7.2. Except with respect to the subject matter or content of the advertising copy referred to in Paragraph 7.1 hereof, DVI shall indemnify and hold harmless Philip Morris and Miller from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees, arising from or in connection with any matter contemplated herein. At the option of Philip Morris or Miller, either party may defend any such suit on its own behalf, unless such suit is defended by an insurance carrier, but at the expense of DVI and without any release, impairment or limitation of the obligations of DVI hereunder.

Section 8. Insurance

DVI shall provide, at no cost or expense to Philip Morris or Miller, public liability insurance with a combined single limit of at least \$1,000,000 per occurrence for personal injury or death covering any incident that may occur at the Racetrack and shall provide each of Philip Morris and Miller with a

2008836679

certificate of the insurance carrier naming Philip Morris Incorporated and Miller Brewing Company as insureds, showing that the insurance has been obtained and providing that the insurance shall not be canceled except upon thirty (30) days' written notice to Philip Morris and Miller. DVI also shall obtain and provide Philip Morris and Miller with proof of Workers' Compensation Insurance in an amount not less than \$500,000.

Section 9. Authority

DVI represents and warrants that it has full and exclusive right and authority to enter into this Agreement granting to Philip Morris and Miller the rights set forth herein and that the Advertising System is and will remain free of all liens and encumbrances.

Section 10. Insolvency or Bankruptcy

If DVI shall become insolvent, make an assignment for the benefit of creditors, become the subject of any bankruptcy, reorganization or arrangement proceeding or default in any obligation, which default would allow the party to whom the obligation is owed to attempt to foreclose Philip Morris or Miller from exercising its respective rights as granted hereunder, then, subject to any applicable bankruptcy laws, Philip Morris and Miller shall have the right to terminate this Agreement at any time thereafter, on written notice to DVI, effective immediately.

15488800

Section 11. Audits, Retention and Inspection
of Records

DVI shall maintain records of all contracts, papers, correspondence, proof of payment, affidavits of performance, ledgers, books, accounts and other information relating to the payments made by Advertiser or DVI for the services and other performance hereunder. Either of Philip Morris or Miller or their respective designees may inspect, examine and review such records (and make copies thereof) at any time during normal business hours.

Section 12. Nature of Agreement

Notwithstanding Paragraph 2.11 hereof, the parties understand and agree that as to Miller, this Agreement is solely for the purchase of advertising rights and nothing contained in this Agreement or the negotiations preceding it shall prevent, deter, hinder or restrict in any way the rights of DVI or the Racetrack, their affiliated companies and/or concessionaires or other malt beverage retailers from purchasing any brand or brands of malt beverages which any of them may choose to purchase.

Section 13. Relationship of the Parties

DVI is and shall remain an independent contractor and nothing contained herein or done pursuant hereto shall be construed to create any relationship of principal and agent or employer and employee between Philip Morris or Miller, on the one hand, and DVI, on the other, or make them joint venturers.

2040833458

Section 14. Headings

Headings are supplied for convenience of reference only and are not to be construed as an interpretation of any of the language of this Agreement.

Section 15. Governing Law

This Agreement, and all matters in issue collateral hereto, shall be governed by the laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York.

Section 16. Entire Understanding

This Agreement contains the entire understanding of the parties relating to the subject matter hereof and may not be changed except by consent of the parties in writing.

Section 17. Waiver

No waiver by either party of a breach of any of the terms of this Agreement shall be deemed a general waiver or a waiver of any future breach of the same or any other term or terms hereof.

Section 18. Notices

Any notice required or permitted to be given to Advertiser, under the terms of this Agreement shall be given to both Philip Morris and to Miller. Any notice required or permitted to be given under the terms of this Agreement, except that required under Paragraph 2.10, shall be in writing and, except as

2040883959

otherwise provided herein, shall be deemed to be given as of the date of postmark if sent by United States certified or registered mail, return receipt requested, postage fully prepaid, to the applicable address set forth below, or to such other person or address as the respective parties may designate by written notice to the other parties as herein provided.

DVI:

Diamond Vision, Inc.
430 Park Avenue
New York, New York 10022
Attn: Vice President and
General Counsel

PHILIP MORRIS:

Philip Morris U.S.A.
120 Park Avenue
New York, New York 10017
Attn: Manager of Special Media

MILLER:

Miller Brewing Company
3939 West Highland Boulevard
Milwaukee, Wisconsin 53201
Attn: Media Manager

2040883960

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

DIAMOND VISION, INC.

PHILIP MORRIS U.S.A.

By: _____

By: _____

Title: _____

Title: _____

MILLER BREWING COMPANY

By: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

THISTLEDOWN RACING CLUB, INC.

By: _____

Title: _____

SUMMIT RACING CLUB, INC.

By: _____

Title: _____

2040883961

RANDALL RACING CLUB, INC.

By: _____

Title: _____

CRANWOOD RACING CLUB, INC.

By: _____

Title: _____

RACEWAY PROPERTIES, INC.

By: _____

Title: _____

2040883962

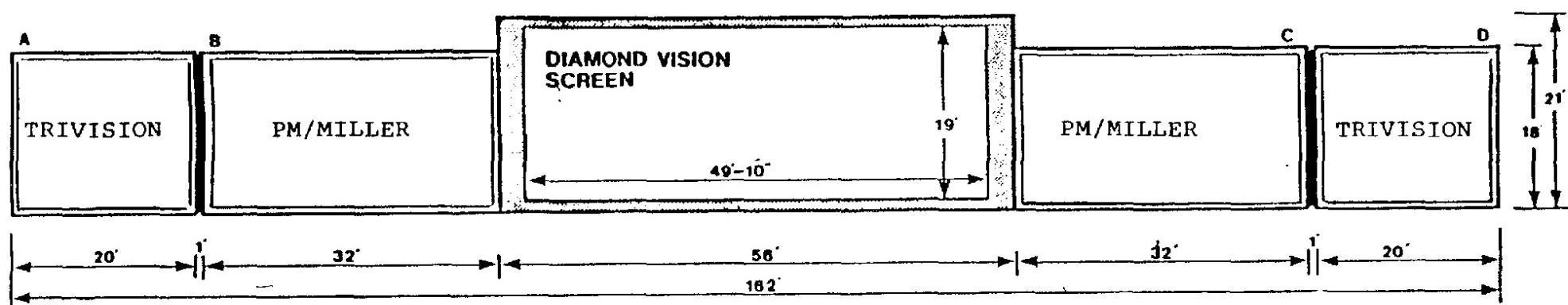
Exhibit 'A "**Advertising Panels****Thistledown**

EXHIBIT B

The advertising space in and around the Racetrack during the term of this Agreement (the "Advertising System") will consist of only the following:

- (1) Advertiser's Panels.
- (2) Two 18' x 20' Trivision panels located to the immediate left and right of the Diamond Vision screen.

2040883964